



Office of the Attorney General
State of Texas

July 8, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. John T. Fleming
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OR93-438

Dear Mr. Fleming:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 20381.

The Monte Alto Independent School District (the "school district"), which you represent, has received a request for the following information:

- 1) Personnel Policies . . .
- 2) Board Governance Policy . . .
- 3) The name, home address, and home phone number of the members of the Board of Trustees.
- 4) The name, address, and home number of any and all teachers employed by the district.

You ask whether the school district may withhold items 3 and 4 above under sections 3(a)(1) and 3(a)(2) of the Open Records Act. As you do not comment on items 1 and 2, we presume that the school district has or will make this information available to the requestor. *See* Open Records Decision No. 363 (1983).

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Under *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), a governmental body may withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing and is of no legitimate concern to the public. Section 3(a)(1) also incorporates the right of privacy guaranteed by the United States Constitution. Constitutional privacy protects two related

interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," i.e., marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the private interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)).


Section 3(a)(2) excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The court in *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), found that section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test that the Texas Supreme Court in *Industrial Foundation* articulated for section 3(a)(1) of the act.

Section 6(2) of the Open Records Act specifically makes public "the names . . . of all employees and officers of governmental bodies." V.T.C.S. art. 6252-17a, § 6(2). In Open Records Decision No. 169 (1977) at 6-7, this office held that absent a showing of special circumstances, neither common-law nor constitutional privacy protects the home addresses and telephone numbers of public employees. See also Open Records Decision No. 488 (1988) at 4. You have provided us with no information demonstrating special circumstances that warrant closure of the requested information under privacy. Accordingly, we conclude that the school district may not withhold items 3 and 4 under sections 3(a)(1) and 3(a)(2) of the Open Records Act.

We note, however, that sections 3(a)(17) and 3A of the Open Records Act govern release of some the requested information. Under section 3A(a) of the Open Records Act, section 3(a)(17) excepts the home addresses and telephone numbers of a public employee from required public disclosure if the employee had indicated in writing that he does not want his home address and telephone number disclosed. V.T.C.S. art. 6252-17a, § 3A(a). But see Open Records Decision No. 530 (1989) at 5 (stating that governmental body may not solicit indication of preference from its employees under section 3A(b) in response to pending open records request). Accordingly, the school district must withhold the home addresses and telephone numbers only of those employees who have complied with the provisions of section 3A of the Open Records Act. However, the school district must release the remaining information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/jmn

Ref.: ID# 20381

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